

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GAETANO DEVELOPMENT CORP., GATEWAY
IV, LLC, and HARTFORD FIRE INSURANCE
COMPANY a/s/o Gateway IV, LLC,

Judge Rakoff

Plaintiffs,

Case No.: 09-CV-10090

-against-

GOODMAN MANUFACTURING COMPANY, L.P.,
GOODMAN COMPANY, L.P. and GOODMAN
GLOBAL, INC.

Defendants.

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GOODMAN COMPANY, L.P.

Third-Party Plaintiff,

-against-

TOWER MANUFACTURING CORPORATION,

Third-Party Defendant

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TOWER MANUFACTURING CORPORATION,

Second Third-Party Plaintiff,

-against-

EVEREX COMMUNICATIONS, INC., PRIME
TECHNOLOGY (GUANGZHOU), INC.,
CONNECTICUT PTAC SERVICES, LLC, and
COOL TECH HVAC SERVICE, LLC

Second Third-Party Defendants.

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**O'HARA REPLY DECLARATION IN SUPPORT OF
EVEREX'S MOTION FOR SUMMARY JUDGMENT**

James M. O'Hara declares, pursuant to the provisions of 28 U.S.C. § 1746, as follows:

1. I am an associate with the firm of SPEYER & PERLBERG, LLP, attorneys for Second Third-Party Defendant, Everex Communications, Inc. ("Everex"), in the above captioned matter and as such am fully familiar with the facts and circumstances as set forth herein.

2. I submit this reply declaration in further support of Everex's motion for summary judgment.

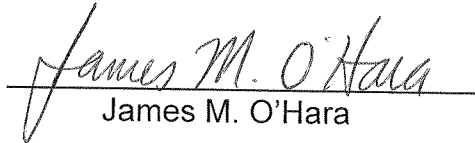
3. Everex hereby incorporates by reference all exhibits attached to the Declaration of Steven C. Bennett, Esq. submitted in support of Goodman's opposition to Tower's motion for summary judgment.

4. Tower improperly relies upon the expert report of Andrew J. Nuehalfen, Ph.D., P.E. ("Neuhalfen") in its papers submitted in opposition to Everex's summary judgment motion. During the two telephone conferences held with this Court on February 7 and 10, 2011, in which Tower sought to retain Neuhalfen as a rebuttal expert, Mr. Gerstman, counsel for Tower, told the Court that Tower would not rely upon the report of Neuhalfen on summary judgment motions. Despite that statement, Tower now relies upon Neuhalfen's report to oppose Everex's summary judgment motion. Based upon the statements made by counsel for Tower during the above referenced

telephone conferences, Everex respectfully requests that the Court ignore the affidavit and report of Neuhalfen in deciding Everex's summary judgment motion.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Dated: Melville, New York
March 7, 2011


James M. O'Hara

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